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TROPICAL PROFILE SDN BHD

v.

KERAJAAN MALAYSIA JABATAN KERJA RAYA MALAYSIA & ORS (NO 5)

B

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[ORIGINATING SUMMONS NO: MT1-24-357-2005]
12 JANUARY 2009

C

CIVIL PROCEDURE: *Government proceedings - Monetary judgment - Enforcement of - Seeking satisfaction of monetary judgment against government - Whether plaintiff legally entitled to invoke s. 33 of the Government Proceedings Act 1956 - Whether proper procedure - Whether objection by all defendants without merit and could not be sustained*

D

CIVIL PROCEDURE: *Originating summons - Controversies of facts - Allegation of - Whether originating summons should have been converted to a writ - Whether affidavits reproductions which did not constitute controversies of facts - Whether objection by defendants misconceived and wholly without merits*

E

The plaintiff's application (encl. 141) under s. 33 of the Government Proceedings Act 1956 prayed for an order that the first defendant release and pay to the plaintiff the sum of

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RM4,558,617.37 pursuant to the judgment of the court after a full hearing ('the writ action') and declaratory judgment of this court in originating summons ('the originating summons'). The defendants raised the issues that (i) the originating summons should have been converted to a writ on grounds of controversies

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of facts and (ii) although the plaintiff had obtained the declaratory judgment, it did not mean that the plaintiff was entitled to payment of the judgment sum and that the first defendant was not obliged to pay the judgment sum. The plaintiff argued that the originating summons was properly filed and that there had been no

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objection by all the defendants so far, until this late stage after the judgment had already been entered against all the defendants. Further, the stand taken for the plaintiff was that the defendants' refusal to make payment pursuant to the judgment constituted a stay when there was no such application.

I

Held (order in terms of encl. 141):

(1) In proceeding with the hearing of the originating summons, all the defendants respectively elected to conduct the matter by reference to affidavits only. They had not advised the court on their views pertaining to the conversion of the originating summons to a writ. They proceeded with the originating summons without any hesitation whatsoever and made submissions thereon. After their defeat, they have only now raised this red herring. Given the factual background as disclosed in the affidavits, it was specifically found that the affidavits were reproductions and repetitions which did not constitute controversies of fact. The objection by all the defendants at this stage was too late in the day, besides being misconceived and wholly without merits. (para 8)

(2) Government authorities, agencies and administrative bodies have exercised the utmost good faith in complying with orders of the court. Where such government authorities etc have failed to do so, the plaintiff for whom the judgment had been entered was legally entitled to enlist the assistance of the courts, by invoking s. 33 of the Government Proceedings Act 1956. The instant application in encl. 141 was indeed an application under s. 33 to seek satisfaction of a monetary judgment. It was the proper procedure. Following the ratio of the Federal Court in *Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd*, the objection by all the defendants herein was without any merit whatsoever, and therefore could not be sustained. (paras 15 & 16)

Case(s) referred to:

Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd [2008] 5 CLJ 321 FC ***(foll)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Tan Sri Othman Saat v. Mohamed Ismail [1982] 1 LNS 2 FC ***(refd)***

Ting Ling Kiew & Anor v. Tang Eng Iron Works Co Ltd [1992] 3 CLJ 1685; [1992] 1 CLJ (Rep) 331 SC ***(refd)***

Legislation referred to:

Government Proceedings Act 1956, s. 33

Rules of the High Court 1980, O. 28 r. 8(1), O. 88 r. 2

A *For the plaintiff - S Ashok (TK Wong with him); M/s TK Wong, Tan & Assoc*
For the 1st defendant - Zaliha Mohd Janis SFC

Reported by Suhainah Wahiduddin

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JUDGMENT

Low Hop Bing J:

C **(Summons In Chambers – Encl. (141))**

Application

[1] The plaintiff's application in encl. (141) under s. 33 of the Government Proceedings Act 1956 prays for an order that
D defendant No. 1 do release and pay to the plaintiff, within seven days of this order, the sum of RM4,558,617.37 pursuant to the judgment of this court given on 24 September 2008 after a full hearing *vide* civil suit No. MT2-22-114-2006 ("the writ action")
E and declaratory judgment of this court dated 23 October 2006 in originating summons No. MT1-24-357-2005 ("the originating summons").

Conversion Of Originating Summons To Writ

F **[2]** Learned senior federal counsel Cik Zaliha bt Mohd Janis, for defendant No. 1, raised the issue that the originating summons should have been converted to a writ on grounds of controversies of facts in which 24 affidavits had been filed. She relied on *Ting Ling Kiew & Anor v. Tang Eng Iron Works Co Ltd* [1992] 3 CLJ
G 1685; [1992] 1 CLJ (Rep) 331 SC.

[3] Miss Karen Cheah, learned counsel for defendant No. 6, and who also mentioned on behalf of all the other defendants, associated herself with that submission.

H **[4]** Mr. S. Ashok and Mr. T.K. Wong responded that the originating summons was properly filed and that there had been no objection by all the defendants so far, until this late stage after judgment had already been entered against all the defendants.

I **[5]** In considering *Ting Ling Kiew, supra,* I am of the view that the facts therein should not be disregarded. In essence, the dispute between the parties therein had been engaged in

allegations *inter alia* of fraud, and so the originating summons filed under O. 88 r. 2 of the Rules of the High Court 1980 were eminently unsuitable. The Supreme Court directed the parties to convert the originating summons to a writ under O. 28 r. 8(1) of the same Rules.

[6] It is noticeable that the allegations of fraud in *Ting Ling Kiew, supra,* were completely absent in the originating summons before me.

[7] In proceeding with the hearing of the originating summons, learned counsel for all the defendants respectively elected to conduct the matter by reference to affidavits only. They have not advised me on their views pertaining to the conversion of the originating summons to a writ. They proceeded with the originating summons without any hesitation whatsoever and made submissions thereon. Having considered their submissions, I gave a speaking judgment.

[8] After their defeat, they have now raised this red herring in order to persuade me to go back to the writ procedure. I have nothing to say on their *bona fide*. I would however add that given the factual background as disclosed in the affidavits, I specifically find that the affidavits are reproductions and repetitions which do not constitute controversies of fact. The facts reflected in my said speaking judgment are simple and straightforward, and so do not require regurgitation herein. I hold that the objection by all the defendants at this stage is too late in the day, besides being misconceived and wholly without merits.

[9] Quite apart from that, the writ action has gone through a full trial in which evidence was adduced and tested by the entire process of cross-examination and re-examination. No stone had been left unturned.

Declaratory Judgment

[10] It was contended for all the defendants that although the plaintiff had obtained the declaratory judgment, it does not mean that the plaintiff is entitled to payment of the judgment sum and that defendant No. 1 is not obliged to pay the judgment sum. Reliance was sought in *Tan Sri Othman Saat v. Mohamed bin Ismail* [1982] 1 LNS 2 FC; and *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1978] 1 LNS 143 FC.

[11] The stand taken for the plaintiff is that the defendants' refusal to make payment pursuant to the judgment constitutes a stay when there was no such application.

[12] On my part, I must say that the defendants' omission to apply for a stay is based on the premise of refusal to comply with a court order.

[13] It is trite law that in the declaratory judgment, the plaintiff has established its real interest in the suit: *Tan Sri Othman Saat, supra;* and the plaintiff's rights: *Pengarah Tanah Dan Galian, Wilayah Persekutuan, supra.*

[14] In relation to the aforesaid two weighty Federal Court judgments, there is no submission for all the defendants that the then Menteri Besar of Johor (Tan Sri Othman Saat) or the Director of Lands and Mines Federal Territory, had declined or refused to comply with the declaratory orders made by the court respectively. Indeed, these declaratory orders had been duly complied with by the parties against whom the declaratory judgment had been recorded.

[15] To the best of my knowledge, government authorities, agencies and administrative bodies have exercised the utmost good faith in complying with orders of the court. Where such government authorities etc. have failed to do so, the plaintiff for whom the judgment has been entered is legally entitled to enlist the assistance of the courts, by eg, invoking s. 33 of the Government Proceedings Act 1956.

[16] An illustration of invoking s. 33 arose in *Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd* [2008] 5 CLJ 321 FC. Petrojasa there had obtained a monetary judgment in the High Court against the state government of Sabah. Despite the certificate of judgment ordering the state government of Sabah to make payment thereof, the state government did not do so. The aggrieved plaintiff had to ultimately seek the assistance of the Federal Court for an order directing the payment by the state government of Sabah. The Federal Court held *inter alia* that s. 33 allowed the plaintiff to recover the judgment sum owed by the state government of Sabah.

[17] As set out earlier, the instant application in encl. (141) is indeed an application under s. 33 to seek satisfaction of a monetary judgment. It is in my view the proper procedure. Following the ratio of the Federal Court in *Petrojasa, supra,* I am of the view that the objection by all the defendants herein is without any merit whatsoever, and therefore cannot be sustained.

Conclusion

[18] On the foregoing grounds, I make an order in terms of encl. (141), with costs to be taxed.